

IN THE COURT OF CRIMINAL APPEALS

Ex parte Andrew Pete,
Appellant

The State of Texas,
Appellee

PD-0771-16 FILED
PD-0772-16 COURT OF CRIMINAL APPEALS
PD-0773-16 10/14/2016
ABEL ACOSTA, CLERK

Court of Appeals Nos.:
05-15-01521-CR, 05-15-01522-CR, and
05-15-01523-CR

**State's First Motion for Extension of Time
to File State's Opening Briefs**

The State of Texas respectfully requests, in accordance with the Texas Rules of Appellate Procedure, that this Court grant the State an extension of time to file the State's Opening Brief in the instant cases. In support, the State shows the following:

1. These cases are on appeal from the 292nd Judicial District Court of Dallas County, Texas in cause nos. F12-33559, F12-33560, and F12-33561. Appellant was charged with three counts of aggravated sexual assault of a child. A jury found Appellant guilty of all three counts.
2. However, during the punishment phase, Appellant made an oral motion for a mistrial because the jury had allegedly seen him in leg shackles after he had been convicted. The court below granted Appellant's motion and declared a mistrial as to the punishment phase of the trial.
3. Appellant applied for habeas relief in each case, arguing that the trial court did not have the authority to grant a mistrial on punishment only—that the mistrial must also undo the jury's guilty verdicts. The trial court denied his applications.

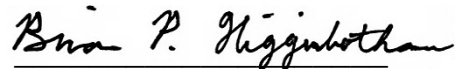
4. Appellant appealed the trial court's order denying habeas relief to the Court of Appeals for the Fifth District of Texas at Dallas.
5. The Court of Appeals concluded that the trial court did not have the authority to grant a mistrial as to punishment only and reversed the trial court's order denying habeas relief. *Ex parte Pete*, Nos. 05-15-01521-CR, 05-15-01522-CR, 05-15-01523-CR, 2016 Tex. App. LEXIS 6088, at *1 (Tex. App.—Dallas June 8, 2016) (mem. op., not designated for publication).
6. The State did not file any motion for rehearing or en banc reconsideration.
7. The State's Petitions for Discretionary Review were filed in this Court on August 10, 2016.
8. This Court granted the State's petitions on September 14, 2016.
9. The State's Opening Briefs are currently due October 14, 2016.
10. The State respectfully requests a 30-day extension of time to November 13, 2016.
11. The State has not previously requested an extension of time to submit its Opening Briefs in these cases.
12. The undersigned prosecutor will be unable to complete the State's petitions during the present briefing period for the following reasons:
 - a. The undersigned has been responsible for representing the State in a murder trial in *The State of Texas v. David Thompson*, F15-76226, in the 265th Judicial District Court of Dallas County.

- b. The undersigned was responsible for submitting the State's Response Brief in an accelerated appeal in *Ex parte Joseph Beaty*, Nos. 05-16-00892-CR, 05-16-00893-CR, and 05-16-00892-CR, in the Court of Appeals for the Fifth District of Texas.
- c. The undersigned was responsible for submitting the State's Response to a petition for a writ of mandamus in *In re Stephen Howard Timms*, No. 05-16-00858-CV, in the Court of Appeals for the Fifth District of Texas.
- d. The undersigned has responded to numerous applications for a writ of habeas corpus on behalf of the State and participated in one evidentiary hearing.

The State therefore prays that this Court grant the State's motion and order the State's petitions due on November 13, 2016.

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Respectfully submitted,



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Certificate of Service

I certify that true copy of this document was served on Scottie D. Allen as appellate counsel for Andrew Pete and Lisa C. McMinn as State Prosecuting Attorney. Service was made by email to scottie_d_allen@scottiedallenlaw.com and to information@spa.texas.gov, on October 12, 2016.


Brian P. Higginbotham